IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.11.2007

C O R A M :

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

WRIT PETITION No.35430 of 2007
and M.P.No.1 of 2007

Suresh Babu ... Petitioner

-vs-

1.The Chief Secretary to Tamil Nadu
Government of Tamil Nadu
Fort St. George
Chennai 600 009.

2.The Director General of Police
Tamil Nadu, Kamarajar Salai
Chennai 600 004.

3.The Inspector of Police
All Women Police Station
Dharmapuri.

4.Lavanya ..Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus as stated therein.

For petitioner :: Mr.G.Jeremiah
For respondents :: Mr. N.Senthilkuimar,GA

ORDER

On direction, Mr.N.Senthilkumar, learned Government Advocate, takes notice for the respondents.

2. This writ petition is for direction against the respondents to enforce the orders and direction passed by the Hon'ble Supreme Court of India in W.P.No.499 of 1997 dated 02.05.2005 reported in 2005 (4) SCC 565, in so far as it relates to the implementation of the Dowry Prohibition Act and Rules made thereunder under Article 142(1) of the Constitution of India.

3. The case of the petitioner is that he was married to the 4th respondent on 01.02.2004 and according to the petitioner, after the marriage, the 4th respondent has left the company of the petitioner in August, 2004 along with ornaments and other jewels. The petitioner

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further states that he has given a lawyer's notice directing the 4th respondent to come and live with him, for which a reply notice was issued. In the meantime, the 4th respondent has lodged a complaint with the third respondent, Inspector of Police, Dharmapuri on 11.06.2007 against the petitioner and his parents on the allegation that the petitioner demanded dowry and harassed her. The petitioner has obtained anticipatory bail in respect of the said complaint.

4. It is the further case of the petitioner that one Public Interest Litigation has been filed in this Court by one Raghavan of Velachery in W.P.No.33935 of 2007, for issuance of writ of mandamus directing the first respondent viz., the Chief Secretary to Government of Tamil Nadu to enforce the order and direction passed by the Hon'ble Supreme Court in W.P.No.499 of 1999 (2005 (4) SCC 565), wherein certain guidelines have been laid down by the Supreme Court in respect of investigation regarding offences under Dowry Prohibition Act and Rules made thereunder and therefore, based on the said public interest litigation, the petitioner has filed the present writ petition.

5. The apprehension of the petitioner is that even though the complaint is given by the 4th respondent/wife against him under Sections 498-A and 506 (2) of the Indian Penal Code, it is an offence under the Dowry Prohibition Act and hence, only the competent officer has to enquire the petitioner on the basis of the guidelines formulated by the Supreme Court in the above cited case.

6. I have heard the learned counsel for the petitioner as well as the respondents.

7. A reference to the FIR registered based on the complaint given by the 4th respondent/wife dated 11.06.2007 shows that she has given a complaint against the petitioner under Sections 498-A and 506(2) of IPC and in the investigation if it is found by the Investigating Officer that it is a case under Dowry Prohibition Act, it is always open to the concerned authority to refer the matter to the competent authority, who is entitled to enquire into the matter by following the guidelines issued by the Supreme Court in the above cited judgement.

8. In a similar circumstance, when a writ petition came before the First Bench of this Court [the Hon'ble Chief Justice and Prabha Srideven,J.] has held that the petition strictly is not a PIL, but, it is only an effort by the accused to scuttle the due process of law. The following observation of the Hon'ble First Bench of this Court in the said case reads as under.

> " 17. Mr.Kalyanasundaram, learned senior counsel appearing for the petitioner urged that when a special Act makes a special offence and a special procedure, offence under it must be dealt with under that Act itself. If an act is an offence under two different Acts, it should be dealt with under the special Act, if it falls strict within it rather than the general law. In this connection, he relied upon Sections 4 and 5 of the Criminal Procedure

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Code. He submitted that in the absence of any special provision to the contrary, the Code shall not affect any special law or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force. In our opinion, neither of the sections is attracted to the facts of the present case. In this case, the complaint is filed under Section 498-A of the Indian Penal Code, which is not an offence under the special enactment and which can be investigated only by the police and not by a Dowry Prohibition Officer. Under Section 198-A of the Code of Criminal Procedure no court shall take cognisance of the offence under Section 498 of the Penal Code, except upon police report or of course upon a complaint by the person aggrieved or her relatives specifically mentioned in the section. The Rules framed by the State Government do not exclude the power of the police officer to enquire into the complaints of demand of dowry and in fact Rule 5(xxii) specifically provides that at all stages the Dowry Prohibition Officer is liable to assist the police officer in carrying out the investigation of the case.

18. In our opinion, this petition is strictly not a PIL, but an effort by the accused to scuttle the due process of law. In these circumstances, we find absolutely no merits in the writ petition and the writ petition stands dismissed. ....."

9. This is also a case, where, admittedly, the 4th respondent has given a complaint against the petitioner under Sections 498-A and 506 (2) of Indian Penal Code and the petitioner has filed this writ petition to scuttle the due process of law. In any event, the respondents are entitled to investigate and as I have stated earlier, during the course of investigation, if it is found that it is a case falling under the Dowry Prohibition Act, the respondents are directed to follow the guidelines laid down by the Supreme Court in the above referred decision.

Accordingly, the writ petition is dismissed. No costs. It is made clear that the respondents are directed to complete the investigation and take necessary action as expeditiously as possible. In view of dismissal of the writ petition, connected miscellaneous petition is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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2.The Director General of Police
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3.The Inspector of Police
All Women Police Station
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1 cc To Mr.G.Jermiah, Advocate, SR.69917.
1 cc To The Government Pleader, SR.69667.

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KSJ(CO)
RVL 03.12.2007

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